

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MICHAEL A. LOMBARDO,</b>	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION NO. 24-CV-1385</b>
	:	
<b>COLIN WESCOE, et al.,</b>	:	
<b>Defendants.</b>	:	

**ORDER**

AND NOW, this 23rd day of April, 2024, upon consideration of Plaintiff Michael A. Lombardo's Motion to Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 3), *pro se* Complaint (ECF No. 2), and motion for appointment of counsel (ECF No. 5), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Michael A. Lombardo, #186008, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Lehigh County Jail or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Lombardo's inmate account; or (b) the average monthly balance in Lombardo's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Lombardo's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's

income credited to Lombardo's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Warden of Lehigh County Jail.

4. The Complaint is **DEEMED** filed.

5. For the reasons stated in the Court's Memorandum, the following claims are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii): (1) all claims against John and Jane Does; (2) any claim brought against Trooper Colin Wescoe, Det. Sgt. Hammer, Det. P. Maczko, and Det. Thomas Rasich in their official capacities; (3) any assault and battery claims against Det. Thomas Rasich; (4) any claim for deliberate indifference to a serious medical need; and (5) any claim for a failure to intervene.

6. The Clerk of Court is **DIRECTED** to send Lombardo a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.

7. Lombardo is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible claims for the claims that have been dismissed. **If Lombardo files an amended complaint, his amended complaint must be a complete document that includes the factual basis for each of Lombardo's claims, including claims that the Court have not yet dismissed if he seeks to proceed on those claims. This means that if Lombardo files an amended complaint, he must include allegations related to his excessive force, assault, and battery claims against Det. Sgt. Hammer and Det. P. Maczko, which have not been dismissed, if he seeks to proceed on those claims. Claims that are not included in the amended complaint will not be considered part of this case because the**

**amended complaint becomes the pleading upon which the case will proceed.** Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Lombardo's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 24-1385. When drafting his amended complaint, Lombardo should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

8. If Lombardo does not file an amended complaint, the Court will direct service of his initial Complaint on Defendants Det. Sgt. Hammer and Det. P. Maczko only. Lombardo may also notify the Court that he seeks to proceed only on these excessive force, assault, and battery claims, rather than file an amended complaint. If he files such a notice, Lombardo is reminded to include the case number for this case, 24-1385.

9. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

10. Lombardo's motion for appointment of counsel (ECF No. 5) is **DENIED** as premature.

**BY THE COURT:**

/s/ John Milton Younge

**JOHN MILTON YOUNGE, J.**